

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

CASA DE ALABANZA and  
JONESBORO COMMERCIAL  
CENTER, LLC,

Plaintiffs,

v.

CITY OF JONESBORO, GEORGIA,  
HON. JOY B. DAY, Mayor, and  
TRACEY MESSICK, BOBBY LESTER,  
BILLY POWELL, DR. DONYA L.  
SARTOR, PH.D., PAT SEBO, and ED  
WISE, individually and in their  
Official Capacities as Mayor and  
Councilmembers of the City of  
Jonesboro, Georgia

Defendants.

CIVIL ACTION FILE NO.  
1:20-cv-04997-LMM

**MOTION TO DISMISS OF DEFENDANTS JOY B. DAY,  
TRACEY MESSICK, BOBBY LESTER, BILLY POWELL,  
DONYA SARTOR, PAT SEBO, AND ED WISE**

Come now defendants Joy B. Day, Tracey Messick, Bobby Lester, Billy Powell, Donya L. Sartor, Pat Sebo, and Ed Wise (hereinafter “these defendants”), pursuant to Rule 12 (b)(6) of the Federal Rules of Civil Procedure, and hereby move for dismissal of all claims asserted against these defendants herein, respectfully showing this Court the following:

1.

In the present action, Casa de Alabanza and Jonesboro Commercial Center, LLC (hereinafter “plaintiffs”) seek declaratory and injunctive relief, damages, attorneys’ fees, and costs against these defendants and against the City of Jonesboro, Georgia.

2.

The prayers for monetary and non-monetary relief against these defendants are based solely on the city’s denial of plaintiffs’ conditional use permit application.

3.

The permit application, filed by Jonesboro Commercial Center, LLC, and attached hereto as Exhibit A, requested issuance of a conditional use permit for property located at 7827 Old Morrow Road for the following purpose: “House of Prayer/Casa De Alabanza. Church, Place of religious assembly.”

4.

These defendants are members of the Jonesboro City Council and Jonesboro’s Mayor.

5.

On November 9, 2020, at a public hearing, these defendants voted to deny

said application for the reasons stated in its November 20, 2020 notification to applicant, a true and correct copy of which is attached hereto as Exhibit B.

6.

The claims advanced by plaintiffs cannot succeed against these defendants because these defendants are protected by absolute legislative immunity and qualified immunity and, therefore, these defendants should be dismissed as parties herein.

7.

Additionally, the official capacity claims against these defendants are independently subject to dismissal based on redundancy because Jonesboro is a named defendant herein.

Wherefore, these defendants respectfully pray that the grounds of their motion to dismiss be inquired into and that said motion be sustained and granted; that all claims asserted against these defendants be dismissed pursuant to Rule 12(b)(6) of Federal Rule of Civil Procedure; that these defendants be dismissed as parties herein, and that they have such relief and such other and further relief as this Court deems just and proper in the circumstances.

The undersigned, in accordance with L.R. 7.1 and 5.1 hereby certifies that the typefont used herein is 13-Point Books Antiqua font.

This 15th day of February, 2021.

/s/ Harvey S. Gray

Harvey S. Gray

Georgia Bar No. 305838

Alex Joseph

Georgia Bar No. 590921

*Attorneys for Defendants Hon. Joy B. Day,  
Tracey Messick, Bobby Lester, Billy Powell, Dr.  
Donya L. Sartor, Ph.D., Pat Sebo, and Ed Wise*

**CERTIFICATE OF SERVICE**

This is to certify that I have this day filed a copy of the foregoing **MOTION TO DISMISS OF DEFENDANTS JOY B. DAY, TRACEY MESSICK, BOBBY LESTER, BILLY POWELL, DONYA SARTOR, PAT SEBO, AND ED WISE** filing the same with the Odyssey eFileGA filing system which will automatically electronically serve all counsel of record.

This 15th day of February, 2021.

/s/ Harvey S. Gray  
Harvey S. Gray  
Georgia Bar No. 305838  
Alex Joseph  
Georgia Bar No. 590921  
*Attorneys for Defendants Hon. Joy B. Day,  
Tracey Messick, Bobby Lester, Billy Powell, Dr.  
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